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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/697,225

10/30/2003

Mary Elizabeth Davis

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EXAMINER

CHAPMAN, GINGER T

ART UNIT

PAPER NUMBER

3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/697,225

Applicant(s)

DAVIS ET AL.

Examiner

Ginger T. Chapman

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6 October 2006 has been entered.

Specification

The objection to the abstract of the disclosure exceeding 150 words is withdrawn in view of Applicants' assertion that the abstract is exactly 150 words.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Igaue et al (GB 2,244,201 A) in view of Timmons et al (US 4,022,211).

With regard to claim 7, as seen in Figures 1-5, Igaue et al disclose a disposable absorbent article for wearing about a lower torso of a wearer and having a longitudinal axis, two laterally opposed article side edges extending between a laterally extending first waist end edge in a first waist region and a laterally extending second waist end edge in a second waist region, and a

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crotch region interposed therebetween (fig. 1), the disposable absorbent article comprising: a backsheet (5); a topsheet (4) joined to the backsheet (5) and having a body-facing surface; an absorbent core (6) disposed intermediate the backsheet and the topsheet; at least one wetness sensation member (12) integrated with the topsheet (4) such that a portion of the topsheet covering a portion of the absorbent core forms a permeable body-facing layer of the wetness sensation member (p. 4, last paragraph), the wetness sensation member (12) also including a flow control layer (12') disposed between the permeable body-facing layer and the absorbent core in a face-to-face arrangement with the permeable body-facing layer and having two laterally opposed flow control layer side edges, at least a portion of each of the two flow control layer side edges being disposed laterally inwardly of the article side edges (figs. 3, 5); and wherein urine deposited by the wearer onto the wetness sensation member (12) can penetrate through the permeable body-facing layer (4) in a z direction away from the wearer to the flow control layer (12') and the flow control layer (12') retards the passage of the urine through the wetness sensation member in the z direction and supports the movement of the urine an x-y plane such that the wearer's awareness of urination is enhanced (p. 6, paragraph 2; p. 7, ll. 4-6).

With regard to the limitation of a visible highlighting, Iguae, at p. 2, paragraph 3, expresses the desire for the caretaker to help toilet train the child. Timmons et al, at c. 1, ll. 35-41 expresses the desire for a visible indicator to signal to the caretaker the presence of wetness. As seen in Figure 6, Timmons et al teaches a visible highlighting (22) being visible at least when viewing the body-facing surface of the topsheet wherein said visible highlighting (22) is visible prior to wetting of the wetness sensation member (26), and wherein the appearance of the visible highlighting (22) is substantially unchanged upon wetting (c. 3, ll. 45-56). Therefore it would

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have been obvious to one having ordinary skill in the art at the time the invention was made to form the wetness sensation member of Iguae having a visible highlighting as taught by Timmons since Timmons states at c. 3, ll. 54-56 that the benefit of using such a visible highlighting is that it remains unchanged upon wetting and it has been held that a combination which only unites old elements with no change in their respective functions is precluded from patentability. *Sakraida v. AG Pro, Inc.*, 425 U. S. 273 (1976).

Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iguae in view of Timmons and further in view of Roe et al (US 6,627,786).

With respect to claims 8-9, the combination of Iguae and Timmons discloses the article having at least one wetness sensation member but does not disclose a plurality of the members spaced apart from one another by a spacing ranging from about 5 mm to about 15 mm. As seen in Figures 6a and 6b, Roe teaches the members (50a, 50b) spaced apart by a spacing ranging from about 5 mm to about 15 mm (col. 8, ll. 54-67 to col. 9, ll. 1-5). At column 1, lines 55-63 Roe expresses the desire and motivation for an article that can facilitate toilet training by enhancing a wearer's awareness that urination has occurred while at the same time preventing soiling or leakage. Roe teaches that the benefit of spacing the wetness sensation members is that the spacing allows enough liquid to pass through to the core to prevent flooding that can result in leakage of the article during urination while at the same time enable enough liquid to flow to the wetness sensation members to enhance the wearer's awareness that urination has occurred. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to space the wetness sensation members of Iguae and Timmons by a spacing

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ranging from about 5 mm to 15 mm as taught by Roe et al, since Roe teaches at col. 8, ll. 39-42 that such a position enables the member to be wetted with urine and held in contact with the wearer's skin thereby enhancing the wearer's awareness that urination has occurred.

With respect to claims 10-12, the combination of Iguae and Timmons discloses the article having wetness sensation members but does not expressly disclose the topsheet comprising Z-folds. As seen in Figures 7a and 7b, Roe et al teach the topsheet (24) comprising Z-folds (90a, 90b) spaced apart by a spacing ranging from about 50 mm to about 90 mm (col. 9, ll. 58-59) and comprising elastic members (92a, 92b) disposed along the two flow control layers of each of the wetness sensation members disposed within a respective one of the Z-folds (fig. 7b). Roe et al teach that the Z-folded configuration and the elastic elements maintain the wetness sensation member against the wearer's skin thereby enhancing the wearer's awareness that urination has occurred even when the diaper sags around the wearer. It would therefore have been obvious to one having ordinary skill in the art at the time the invention was made to form the topsheet of Iguae and Timmons comprising Z-folds as taught by Roe in order to provide wetness sensation members held in contact with the wearer's skin thereby enhancing the wearer's awareness that urination has occurred.

Double Patenting

Claim 7 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 6-8 of copending Application No. 10/815,918. Although the conflicting claims are not identical, they are not patentably distinct from each other because all features of the instant invention are disclosed in the '918 claim.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 7 and 8 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3-5 of copending Application No. 10/281,791. Although the conflicting claims are not identical, they are not patentably distinct from each other because all features of the instant invention are disclosed in the '918 claim.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

Applicant's arguments with respect to claims 7-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Osborn (WO 91/19471) teaches indicia (46) visible when viewing the topsheet to indicate wetness to a caretaker (p. 14, ll. 5-15; p. 15, ll. 13-23; p. 16, ll. 1-17; ll. 30-35).

Underhill et al (2003/0114821 A1) teaches flow control layers for retarding the flow of urine in diapers.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 9:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ginger Chapman
Examiner, Art Unit 3761
02/20/07



TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

